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December 15, 2023

**VIA ECF**

The Honorable Nelson S. Román  
United States District Judge  
Southern District of New York  
300 Quarropas St.  
White Plains, New York 10601-4150

Re: Frey v. Chiumento, et al, 21 Civ. 5334 (NSR)

Dear Judge Román:

This Office represents Defendant Dominick L. Chiumento,<sup>1</sup> in his official capacity as Superintendent of the New York State Police, in the above-referenced action. We write jointly on behalf of all parties, and in accordance with the Court's Order of March 13, 2023 (Dkt. No. 80), to respectfully alert the Court that, on December 8, 2023, the Second Circuit issued its decision in *Antonyuk v. Hochul*, No. 22-2908, which is attached to this letter as "Exhibit A."<sup>2</sup> The Court also issued a decision in a companion case, *Gazzola v. Hochul*, No. 22-3068, which is attached as "Exhibit B."

The parties further respectfully request that the Court continue to stay the District Court case in its entirety, pending resolution of Plaintiff's appeal of the Court's Order dated March 13,

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<sup>1</sup> Superintendent Nigrelli, the former State defendant in this action, retired from government service effective October 6, 2023. Because Superintendent Nigrelli was sued only in his official capacity, *see* Second Amended Complaint, ECF No. 47 at ¶ 16, the substitution takes place "automatically." Fed. R. Civ. P. 25(d); *see Williams v. Annucci*, 895 F.3d 180, 187 (2d Cir. 2018). We request that the case caption be amended to reflect Superintendent Chiumento stepping into the role.

<sup>2</sup> *Antonyuk* was heard and decided in tandem with three other cases, *Hardaway v. Chiumento*, 22-2933, *Spencer v. Chiumento*, 22-2987, and *Christian v. Chiumento*, 22-3237.

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2023 (Dkt. No. 80), which is scheduled to be argued before the Second Circuit Court of Appeals on January 30, 2024.

We thank the Court for its attention to this matter.

Respectfully submitted,

/s/ Suzanna Publicker Mettham

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